

## Subpart J—Rehabilitation

SOURCE: 64 FR 50212, Sept. 15, 1999, unless otherwise noted.

### § 35.900 Purpose and applicability.

(a) *Purpose and applicability.* (1) The purpose of this subpart J is to establish procedures to eliminate as far as practicable lead-based paint hazards in a residential property that receives Federal rehabilitation assistance under a program administered by HUD. Rehabilitation assistance does not include project-based rental assistance, rehabilitation mortgage insurance or assistance to public housing.

(2) The requirements of this subpart shall not apply to HOME funds which are committed to a specific project in accordance with § 92.2 of this title before September 15, 2000. Such projects shall be subject to the requirements of § 92.355 of this title that were in effect at the time of project commitment or the requirements of this subpart.

(3) For the purposes of the Indian Housing Block Grant program and the CDBG Entitlement program, the requirements of this subpart shall apply to all residential rehabilitation activities (except those otherwise exempted) for which funds are first obligated on or after September 15, 2000. For the purposes of the State, HUD-Administered Small Cities, and Insular Areas CDBG programs, the requirements of this subpart shall apply to all covered activities (except those otherwise exempted) for which grant funding is awarded to the unit of local government by the State or HUD, as applicable, on or after September 15, 2000. For the purposes of the Emergency Shelter Grant Program (42 U.S.C. 11371–11378) and the formula grants awarded under the Housing Opportunities for Persons with AIDS Program (HOPWA) (42 U.S.C. 12901 et. seq.), the requirements of this subpart shall apply to activities for which program funds are first obligated on or after September 15, 2000.

(4) For the purposes of competitively awarded grants under the HOPWA Program and the Supportive Housing Program (42 U.S.C. 11481–11389), the requirements of this subpart shall apply to grants awarded under Notices of

Funding Availability published on or after September 15, 2000.

(5) For the purposes of the Indian CDBG program (§ 1003.607 of this title), the requirements of this subpart shall not apply to funds whose notice of funding availability is announced or funding letter is sent before September 15, 2000. Such project grantees shall be subject to the regulations in effect at the time of announcement or funding letter.

(b) The grantee or participating jurisdiction may assign to a subrecipient or other entity the responsibilities set forth in this subpart.

### § 35.905 Definitions and other general requirements.

Definitions and other general requirements that apply to this subpart are found in subpart B of this part.

### § 35.910 Notices and pamphlet.

(a) *Notices.* In cases where evaluation or hazard reduction or both are undertaken as part of federally funded rehabilitation, the grantee, participating jurisdiction, or CILP recipient, shall provide a notice to occupants in accordance with § 35.125.

(b) *Lead hazard information pamphlet.* The grantee, participating jurisdiction, or CILP recipient, shall provide the lead hazard information pamphlet in accordance with § 35.130.

### § 35.915 Calculating rehabilitation costs, except for the CILP Program.

(a) *Applicability.* This section applies to recipients of Federal rehabilitation assistance, except for CILP recipients, for which § 35.920 applies.

(b) *Rehabilitation assistance.* (1) Lead-based paint requirements for rehabilitation fall into three categories which depend on the amount of rehabilitation assistance provided. The three categories are:

(i) Assistance of up to and including \$5,000 per unit;

(ii) Assistance of more than \$5,000 per unit up to and including \$25,000 per unit; and

(iii) Assistance of more than \$25,000 per unit.

(2) For purposes of implementing §§ 35.930–35.935, the amount of rehabilitation assistance is the average per

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unit amount of Federal funds for the hard costs of rehabilitation, excluding lead-based paint hazard evaluation and hazard reduction activities. Costs of site preparation, occupant protection, relocation, interim controls, abatement, clearance and waste handling attributable to lead-based paint hazard reduction are not to be included in the hard costs of rehabilitation.

(c) *Calculating rehabilitation assistance.* For a residential property that includes both federally assisted and non-assisted units, the rehabilitation costs of non-assisted units are not included in the calculation.

(1) The average cost of rehabilitation for the assisted units is calculated as follows:

Per Unit Rehabilitation \$ = (a/c) + (b/d)

Where:

a= Federal Rehabilitation Assistance for all assisted units

b= Federal Rehabilitation Assistance for common areas and exterior painted surfaces

c= Number of federally assisted units

d= Total number of units

(2) Eight out of 10 dwelling units in a residential property receive Federal rehabilitation assistance. The total amount of Federal rehabilitation assistance for the dwelling units is \$90,000, and the total amount of Federal rehabilitation assistance for the common areas and exterior surfaces is \$10,000. Based on the formula above, the average per unit amount of Federal rehabilitation assistance is \$12,250. This is illustrated as follows: \$12,250 = (\$90,000/8) + (\$10,000/10).

### § 35.920 Calculating rehabilitation costs for the Flexible Subsidy-CILP program.

All dwelling units and common areas in a residential property are considered to be assisted under the CILP program. The cost of rehabilitation is calculated as follows:

Per Unit Rehab \$ = Federal Rehab Assistance / Total Number of Units.

### § 35.925 Examples of determining applicable requirements.

The following examples illustrate how to determine whether the requirements of §§ 35.930(b), (c), or (d) apply to

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a dwelling unit receiving Federal rehabilitation assistance (dollar amounts are on a per unit basis):

(a) If the total amount of Federal assistance for a dwelling is \$2,000, and the hard costs of rehabilitation are \$10,000, the lead-based paint requirements would be those described in § 35.930(b), because Federal rehabilitation assistance is up to and including \$5,000.

(b) If the total amount of Federal assistance for a dwelling unit is \$6,000, and the hard costs of rehabilitation are \$2,000, the lead-based paint requirements would be those described in § 35.930(b). Although the total amount of Federal dollars is more than \$5,000, only the \$2,000 of that total can be applied to rehabilitation. Therefore, the Federal rehabilitation assistance is \$2,000 which is not more than \$5,000.

(c) If the total amount of Federal assistance for a unit is \$6,000, and the hard costs of rehabilitation are \$6,000, the lead-based paint requirements are those described in § 35.930(c), because the amount of Federal rehabilitation assistance is more than \$5,000 but not more than \$25,000.

### § 35.930 Evaluation and hazard reduction requirements.

(a) *Paint testing.* The grantee, participating jurisdiction, or CILP recipient shall either perform paint testing on the painted surfaces to be disturbed or replaced during rehabilitation activities, or presume that all these painted surfaces are coated with lead-based paint.

(b) *Residential property receiving an average of up to and including \$5,000 per unit in Federal rehabilitation assistance.* Each grantee, participating jurisdiction, or CILP recipient shall:

(1) Conduct paint testing or presume the presence of lead-based paint, in accordance with paragraph (a) of this section. If paint testing indicates that the painted surfaces are not coated with lead-based paint, safe work practices and clearance are not required.

(2) Implement safe work practices during rehabilitation work in accordance with § 35.1350 and repair any paint that is disturbed.

(3) After completion of any rehabilitation disturbing painted surfaces, perform a clearance examination of the